

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

No. 290

JAM. M. HURD and MARY I. HURD,

Petitioners,

v.s.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE
DERITA, VICTORIA DERITA, CONSTANTINO MARCHE-
GIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA
and MARGARET GIANCOLA,

**BRIEF OF THE JAPANESE AMERICAN CITI-
ZENS LEAGUE—AMICUS CURIAE.**

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Interest of the Japanese American Citizens League.

The Japanese American Citizens League¹ is an organization of United States citizens. Membership is open to all, regardless of race, color or creed. The program of the JACL is best described by its slogan: "For Better Americans in a Greater America" and by the slogan of the League's Anti-Discrimination Committee: "Equal Rights, Equal Opportunities for All." While the JACL is primarily concerned with assisting persons of Japanese ancestry—whose problems, because of the evacuation pro-

¹Hereinafter referred to as "JACL."

gram, are necessarily varied and different from other racial groups—the JACL sees only too well that discrimination or unfair treatment against any minority redounds to the detriment of all minorities and therefore to the nation as a whole.

Accordingly, this brief will attempt to bring to this court's attention, in a small way, certain features of the race restrictive covenants and how they have affected the American Japanese.² The purpose, however, is not to "tell a tale of woe" but to illustrate a case in point and to demonstrate that what has happened to persons of Japanese ancestry is but an example of what has happened to other minority groups.

Judicial Enforcement of Race Restrictive Covenants Is Contrary to the Public Policy of the United States.

The provisions of our laws and the treaties to which we have become parties, to say nothing of the Constitutional provision itself, make it crystal clear that enforcement by the courts of land covenants based exclusively on race contravenes those laws and treaties as well as the Constitution.

Section 1978, Revised Statutes, 8 U. S. C. 42, provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is en-

²These facts are of common knowledge, and this court may take judicial notice of them here just as it did in the curfew (*Hirabayashi v. United States*, 320 U. S. 81, 96, 98), and evacuation (*Korematsu v. United States*, 323 U. S. 214, 218), cases. See Brief of the United States in the *Korematsu* case, No. 22, October Term, 1944, pp. 11-16, and footnote 2, page 11, of the Brief. See also Brief of the United States in the *Hirabayashi* case; No. 870, October Term, 1942, p. 21.

joyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Section 5508, Revised Statutes, 18 U. S. C. 51, makes it criminal for "two or more persons" to "conspire, to injure, oppress . . . any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . . ."

In Section 55 C of the United Nations' Charter we agreed to "promote . . . universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race," (59 Stats. 1031.)

And by Resolution No. 41 adopted March 7, 1945, at Mexico City when the Act of Chapultepec was signed by this nation, we agreed "to prevent . . . all acts which may provoke discrimination among individuals because of race or religion."^{2a}

Finally, this court, in interpreting the 14th Amendment to the United States Constitution, said:

"Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color." (*Bychanan & Warley*, 245 U. S. 60, 78, 79.)

From the above it seems plain that when a court lends its arm to enforcement of covenants prohibiting persons

^{2a}Inter-American Conference on Problems of War and Peace, Pan American Union, Congress and Conference Series No. 47, 1945, p. 70.

from using their own land solely by reason of the accident of birth, they are acting diametrically contrary to all of these principles.

FORCED SEGREGATION.

One of the main reasons given for The Evacuation of the Japanese from the west coast during the war was that Japanese were "clannish", "unassimilated", that they lived in "Little Tokyos".³ And this court justified, at least in part, such drastic restrictions against loyal United States citizens as curfew (*Hirabayashi v. United States*, 320 U. S. 81) and evacuation (*Korematsu v. United States*, 323 U. S. 214), because of the existence of these phenomena.

If those charges be true, they can to a great extent be attributed to the presence of the restrictive covenant. For the court to enforce restrictive covenants is to further entrench on the national scene a situation found by the military to be dangerous to our national defense. Were the Japanese not forced, by reason of race restrictive covenants, to live in definite areas, they would presumably have lived normal lives throughout the area and consequently the "clannishness" which General DeWitt found so inimical to national safety would not have existed.

Thus we find that one effect of the enforcement of the race restrictive covenant was to prevent persons of Japanese ancestry from intermingling with the rest of the population. And then, this enforced "ghettoizing" was

³Final Report: Japanese Evacuation from the West Coast, 1942, U. S. Government Printing Office, 1943, pp. 9, 17. Myths and Facts About the Japanese Americans, Department of the Interior, War Relocation Authority, U. S. Govt. Printing Office, June, 1945, p. 27 et seq.

used against them to substantiate the upheaval now known as "The Evacuation."

The Evacuation, while it lasted, did end the Little Tokyos. With the leaving of the Japanese and the increased population because of war activity, the Japanese community on the West Coast disappeared from the scene. Other groups moved into the areas.

With The Evacuation ended and the war over, persons of Japanese ancestry were again permitted to return. Since they had to resettle and their former residences were occupied by other people, it would seem to follow that they would disperse in the community at large, and the Little Tokyo would not reappear. This might have happened had not a potent and powerful force ~~work~~ worked against it. That force was the race restrictive covenant. Though no figures are available as to how many Japanese attempted to buy or live in homes as other normal persons in the community, the experience of these people is full of such efforts and of their frustration. Accordingly, the returned evacuee is again being forced to "Little Tokyoize" himself. He is thus again placed in the position of being criticized for being "clannish" and "unassimilable."

CITIZENS AND VETERANS WITHOUT HOMES.

Though having fought for this country in the war for the ideal of ridding the world of the pernicious doctrine of the "Master Race", the returning American veteran of Japanese ancestry finds that theory more prevalent in this country than ever before. But an even greater blow is for him to find an official arm of his government, the very courts themselves, aiding in and making possible the further spread and growth of this cancer.

Pitiful cases are being reported continuously throughout the country. Probably the most authentic source of current material on events concerning Americans of Japanese ancestry is the "Pacific Citizen", official organ of the Japanese American Citizens League. We cite some of the cases:

Jon Matsuo, a veteran, upon his return attempted to obtain accommodations in a Veterans' Housing Project in Minneapolis. He was unable to do so because of the existence of a restrictive covenant. (Pacific Citizen, January 11, 1947, page 8.)

A Japanese family, whose son had been killed in action in France, attempted to purchase a home with the money from the son's insurance. After finding a suitable location, they discovered they could not live on the property because of the existence of a restrictive covenant. (Pacific Citizen, April 12, 1947, page 4.)

Kakuo Terao lost his left arm and the use of his legs in combat in Europe. He is under treatment at the United States Army's Birmingham General Hospital in Van Nuys, California. He is able to see his wife and two-year-old daughter only on week ends. Because the housing project at San Pedro, where his wife and child were living, was sold to private parties, he was forced to find a

*The Pacific Citizen is published at 415 Beason Building, Salt Lake City 1, Utah. The United States Department of the Interior in its report on the Postwar Adjustment of the Evacuated Japanese Americans ("People in Motion," U. S. Gov't Printing Office, 1947), relies heavily on it for its sources of information. Of this newspaper, Professor Eugene V. Rostov of the Yale University Law School said: "(It) is an indispensable source of material on events and attitudes with respect to the process of evacuation, internment and relocation." (54 Yale Law Journal 489.)

new home for them. He attempted to purchase a new home in San Fernando Valley near the hospital, only to learn that his family cannot live there because of the existence of restrictive covenants. (Pacific Citizen, August 30, 1947, page 1.)

In Denver, in the fall of 1946, a returning American veteran of Japanese ancestry purchased a new home in a suburb of the city. He has been threatened with ousting therefrom because of the presence of a restrictive covenant. (Pacific Citizen, February 1, 1947, page 3.)

Just this month Robert Sato, a returning veteran, sought a home for himself and his mother in Denver. The presence of a restrictive covenant nullified that aim. (Pacific Citizen, November 11, 1947, page 1.)

Mr. and Mrs. William Utsumi returned after The Evacuation to their home in Oakland, California. Though they moved into their own property, an effort was made to force them to move therefrom because of the existence of a restrictive covenant. (Pacific Citizen, January 18, 1947, page 3.)

Tsunao Shikiguni returned from The Evacuation to his home in southwest Los Angeles. He was notified by an attorney representing property owners in the neighborhood that if he did not move out of the house, suit to force him so to do would be brought against him. (Pacific Citizen, September 27, 1947, page 1.)

Nine hundred returning evacuees who had been living in an emergency trailer camp operated by the Federal Public Housing Agency in Burbank, California, were between the proverbial "frying pan" and "the fire" when the Agency's lease on the property expired. Forced to move from the project, they found themselves unable to

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obtain accommodations, not only because of the general housing shortage in the Los Angeles area, but also because of the presence of restrictive covenants wherever they turned. (Pacific Citizen, June 31, 1946, page 4.)

A concerted effort was made by realtors to set up the whole South San Francisco peninsula as a "white" community from which all minority groups, including the Japanese, would be excluded. (Pacific Citizen, July 19, 1946, page 2.)

Nearly 500 Japanese lived in South Pasadena, California prior to The Evacuation. Upon their return, they found the city almost completely blanketed with restrictive covenants. (Pacific Citizen, October 11, 1947, page 2.)

The above resume does not purport to be exhaustive. The number of Japanese who returned to their former hometowns only to find themselves confronted with restrictive covenants and therefore forced to again "Little Tokyoize" will never be known. The untold suffering and hardship accentuated by the enforcement of the restrictive covenants are matters of public knowledge. Couple this experience with the restrictions placed by the Alien Land Laws and we see a picture of an integral part of our national population driven from desirable areas and pushed into cramped and overcrowded ghettos solely because of the accident of their birth.

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OFFICIAL RECOGNITION OF RESTRICTIVE COVENANTS AND THEIR EFFECT ON THE HOUSING OF RETURNING EVACUEES.

The use of the word "ghettos" to describe the areas to which Japanese and other minority groups are pushed because of the covenants is not our own. The President's Committee on Civil Rights in its report, "To Secure These Rights", (U. S. Govt. Printing Office, 1947) describes these areas in just that term (pgs. 68-70), and the Committee is of the opinion that judicial enforcement of the covenants is governmental aid to racial discrimination. (Pgs. 69, 70.)

Testimony before the President's Committee by a leading American of Japanese ancestry was to the following effect:

"We persons of Japanese ancestry know the meaning of a housing shortage. We were evicted from our homes and now that we are permitted to return, we find that our former accommodations are occupied by members of other minority groups. We cannot purchase or rent housing in other areas because of restrictive covenants that apply not only to us but to several others. Thus, we are forced to either evict the present occupants or to crowd in in what few facilities there are. In either case, we are not improving community relations but creating race tensions that may, unless something is done to relieve the situation, break out into ugly sores."

⁵Testimony of Mike Masaoka, National Legislative Director of the Japanese American Citizen's League Anti-Discrimination Committee, Inc., before the President's Committee on Civil Rights, May 1, 1947, Reprinted as Appendix B to "People in Motion" (U. S. Govt. Printing Office, 1947) at pg. 258. The statement above set forth appears at pg. 259.

The President's Committee found that in addition to the Japanese, race restrictive covenants have been enforced at least against the following minorities: Armenians, Jews, Negroes, Mexicans, Syrians, Chinese and Indians. ("To Secure These Rights", pg. 68.)

In "People in Motion," Report on the Postwar Adjustment of the Evacuated Japanese Americans (U. S. Govt. Printing Office, 1947), the United States Department of the Interior points out the very serious nature of the housing problem to the returning Japanese. In every case, the existence of the restrictive covenant added to the already mountainous task presented by the general housing shortage.

Thus even in Seattle, where the situation is not so acute as in other places, the covenant effectively has kept the Japanese segregated and out of certain areas. ("People in Motion," pgs. 176-177.)

And in the San Francisco Bay area, where the housing situation for the Japanese has been characterized as "desperate", there have been no new areas since 1942 wherein they can go. This means that despite the great increase in population, the Japanese, and other minority groups who are kept out of the "acceptable" areas, must continue to congregate despite their increased numbers in the same cramped space they had before The Evacuation. ("People in Motion", pgs. 178-179.)

The housing situation in Los Angeles presented the greatest problem for returning Japanese than in any other city. Add to the general housing shortage (125,000 home-

less families) the additional hardship caused by the restrictive covenant and a picture of the situation may be perceived. Again the Japanese are forced back to "Little Tokyo". Of such an area the report says:

"The hostels in Little Tokyo are breeding places of delinquency. They have no room for entertainment, for visiting, or for inviting friends, and so the young people, kids of 14 and 15, run around outside all hours of the night and day." ("People in Motion", pg. 182.)

In Denver the same deterrent to "assimilation" because of the covenant is present. ("People in Motion", pg. 171.)

Conclusion.

Thus the cycle has run its course. Originally punished because he was "clannish", "unassimilated", and lived in concentrated areas—a situation to a large extent brought about by reason of the restrictive covenant—the Japanese found himself subject to the forced migration of The Evacuation. Returning therefrom and attempting to become assimilated, he found himself effectively kept out of area after area and tract after tract and forced back again into the "Little Tokyos". By reason of this he is once more criticized as being "unassimillable". To all this, the court enforcement of racial restrictive covenants has given aid and comfort. A clearer case of action that is contrary to our avowed public policy could hardly be found.

We have passed laws condemning racial discrimination; we have signed treaties to the same effect; this court has struck down laws which accomplished such discrimination; this court should now, in the same view, prevent the courts of our land from violating that policy.

Respectfully submitted,

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